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No. 83-102

In the Supreme Court of the United States

October Term, 1983

GRENADA BANK, A Mississippi Corporation,
DBA "COAHOMA BANK",
Petitioner,

VS.

ROBERT WILLEY, SR., ET AL.,
Respondents,

VS.

HUNTINGDON ASSOCIATES, LTD.,
CLARENCE C. DAY and
LAWSON F. APPERSON,
Intervenors/Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This case arises out of postjudgment efforts by the Petitioner, Grenada Bank, to satisfy two judgments against Robert Willey, Sr. ("Willey"), obtained in the U.S. District Court for the Northern District of Mississippi. One judgment for \$164,975.00 was obtained on September 25, 1980 and one for \$104,883.08 on July 17, 1981.

There is no dispute as to the facts.

Prior to June 3, 1981, Willey owned a 47% interest in five partnerships formed under the Mississippi Uniform Limited Partnership laws and a 41% interest in a partnership formed under the Tennessee Uniform Limited Partnership laws ("Partnerships"). Each Partnership was formed for the purpose of building an apartment complex under rent subsidy programs established by the United States Government wherein the Department of Housing and Urban Development would insure mortgage loans on the projects. Five projects were to be built in Mississippi and one in Tennessee.

On June 3, 1981, Intervenor/Respondents, Clarence Day and Lawson Apperson, acquired an aggregate 99.7% ownership interest in each of said Partnerships through the execution of Subscription Agreements and Amended and Restated Partnership Agreements for each Partnership. These agreements obligated Intervenor/Respondents to contribute an aggregate of One Million (\$1,000,000.00) Dollars directly to the Partnerships and the Amended and Restated Partnership Agreements restated the ownership interest of each Partnership vesting in Intervenor/Respondents an aggregate 99.7% ownership interest in each Partnership and reducing Willey's interest to .01% in each Partnership.

Each Amended and Restated Partnership Agreement granted unto Mr. Apperson, as majority general partner, the right to terminate Willey's remaining .01% interest in the Partnerships, for a consideration of \$1.00, without cause, upon completion of the apartment project and final endorsement by the Department of Housing and Urban Development of each Partnership apartment project.

Subsequent to the postjudgment proceedings all projects were completed and endorsed by the Department of Housing and Urban Development and Willey's .01% interest in each Partnership has heretofore been terminated.

On June 29, 1981 no process had been instituted by Petitioner against the Partnership interests of Willey and Intervenor/Respondents were not aware of the judgments against Willey. By said date Intervenor/Respondents had contributed the aggregate subscription price of One Million (\$1,000,000.00) Dollars to the Partnerships in the form of Four Hundred Thousand (\$400,000.00) Dollars cash and Six Hundred Thousand (\$600,000.00) Dollars in negotiable promissory notes. These sums were used to provide funding for construction of the apartment complexes by the respective Partnerships. Of the Six Hundred Thousand (\$600,000.00) Dollars in notes, in excess of Four Hundred Thousand (\$400,000.00) Dollars has now been paid to the Partnerships and used to complete construction of the apartments and obtain HUD final endorsement.

Realignment of the ownership interests were effective June 3, 1981 upon execution of the Amended and Restated Partnership Agreements although the agreements were not recorded in the appropriate county office until early September, 1981.

On July 29, 1981, Petitioner began its attempts to satisfy its judgments against Willey, eventually seeking judicial sale of his purported 47% interest in each Mississippi Partnership and his 41% interest in the Tennessee Partnership.

Petitioner's actions as to the Mississippi Partnerships were commenced in the U.S. District Court for the Northern District of Mississippi and the action against the Tennessee Partnership was commenced in the U.S. District Court for the Western District of Tennessee. The course of procedure in each Court was substantially identical. The writ of execution sought to be used by Petitioner in each Court was a writ of fieri facias, a direction to the Marshal to seize the Partnership interests. The writ was served by

mail on Mr. Willey, and was not served upon the respective Partnerships.

Upon hearing of Petitioner's attempted judicial sale of these interests, Intervenor/Respondents sought, and were permitted, to intervene in the proceedings in the U.S. District Court for the Northern District of Mississippi and in the U.S. District Court for the Western District of Tennessee.

Both District Courts held in favor of Intervenor/Respondents.

Both District Court decisions were appealed by Petitioner.

The United States Court of Appeals for the Fifth Circuit in an opinion filed December 20, 1982 affirmed the District Court decision, holding that:

1. Intervenor by executing the Subscription Agreements and the Amended and Restated Partnership Agreements on June 3, 1981 acquired a 99.7% interest in each Mississippi Partnership; and

2. As to the remaining .01% interest in each of the Mississippi Partnerships owned by Willey at the time of execution, a writ of garnishment, not a writ of fieri facias (a direction to the Marshal to take physical possession of the property) was the proper writ of execution under Mississippi law.

Both the Court of Appeals and the District Court, held that a partnership interest is an intangible and, under Mississippi law, a writ of garnishment served upon the obligor is the proper writ of execution to charge the interest of the Partnership.

The United States Court of Appeals for the Sixth Circuit in an opinion filed April 18, 1983 found that Inter-

venors/Respondents acquired a 99.7% ownership interest in the Tennessee Partnership directly from the Partnership (not from Willey) on June 3, 1981, and that the interest of Willey was thereupon reduced to .01%. The matter was reversed and remanded in order that appropriate procedures might be taken with respect to the .01% interest in the Tennessee Partnership owned by Willey at the time of execution.

A copy of the written opinion delivered by the United States Court of Appeals for the Sixth Circuit is reprinted as an appendix A-1 to the Petition.

Petitioner sought to have this Court review the decision of the United States Court of Appeals for the Fifth Circuit by Petition for Certiorari filed under United States Supreme Court docket number 82-1738.

On June 13, 1983 this Court entered its order denying the Petition for Certiorari.

ARGUMENT

In the instant case, two separate United States District Courts and two separate United States Courts of Appeal, in reviewing the identical facts, have determined that at the time Petitioner commenced the postjudgment process, all that the judgment debtor owned was .01% in each of the six limited Partnerships.

Each of said Courts, either expressly or impliedly concluded that there may be a bona fide shifting of interests among the partners of a limited partnership which is binding on third parties without official recordation, the recordation statutes being for the purpose of limiting the liability of partners.

Thus, there is no conflict between circuits presented with respect to this issue.

The only other issue presented by the Petition relates to the proper execution in Petitioner's postjudgment proceedings. Petitioner contends however, that this issue was answered properly by the District Court in the instant case and undisturbed by the Appeals Court.

It is the Court of Appeals for the Fifth Circuit that Petitioner contends is in error and this Court has heretofore declined to review that decision.

It is submitted that the issue presented is not an appropriate matter for this Court to review on certiorari and that the Petition should be denied.

Respectfully submitted,

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